

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 12-O-16343-DFM
)	
RAYMOND ORTIZ BUENDIA,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 94975,)	ENROLLMENT
)	
A Member of the State Bar.)	
_____)	

Introduction¹

This is Respondent Raymond Ortiz Buendia's fourth disciplinary proceeding. He has been charged here with five counts of misconduct in one client matter. His alleged misconduct includes: (1) seeking to mislead a judge; (2) committing acts of moral turpitude; (3) failing to perform competently; and (4) failing to communicate with a client.

This court finds, by clear and convincing evidence, that Respondent is culpable of four of the charged counts of misconduct. Based upon the nature and extent of culpability and the applicable aggravating circumstances, particularly his three prior records of discipline, the court recommends that Respondent be disbarred from the practice of law.

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

Significant Procedural History

The State Bar of California, Office of the Chief Trial Counsel (State Bar), initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on June 7, 2013. Respondent filed a response on July 2, 2013.

On September 30, 2013, the parties filed a stipulation as to facts.

Trial was held on October 9, 2013. Senior Trial Counsel Ashod Mooradian represented the State Bar. Respondent represented himself.

On October 9, 2013, the court took this matter under submission.

Findings of Fact and Conclusions of Law

The following findings of fact are based on the September 2013 stipulation, Respondent's response to the NDC, and the evidence presented at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on December 16, 1980, and has been a member of the State Bar of California at all times since that date.

Case No. 12-O-16343 [Flores]

Mario Flores retained Respondent to represent him in a civil action against Bank of America. On August 14, 2008, Respondent filed a civil complaint in the San Diego County Superior Court entitled *Mario Flores v. Bank of America National Association, et al.* (Flores matter).

On October 31, 2008, the superior court served Respondent with a Notice of Hearing, informing him that an Order to Show Cause (OSC) regarding the failure to file a Certificate of Service in the *Flores* matter was set for January 9, 2009. Respondent received the Notice of Hearing.

On January 9, 2009, Respondent appeared at the OSC hearing. At the hearing, Respondent informed the court that Flores had filed a bankruptcy petition and requested the court to stay the *Flores* matter for 120 days. The court granted that request.

On July 12, 2010, the superior court served Respondent with a Notice of Hearing, informing him that a status conference in the *Flores* matter was set for September 24, 2010. Respondent received the Notice of Hearing.

On September 24, 2010, the superior court served Respondent with another Notice of Hearing, informing him that a Certificate of Progress hearing in the *Flores* matter was set for December 3, 2010. Respondent received the Notice of Hearing. On that same day, September 24, 2010, Respondent appeared as ordered for the scheduled status conference. At that hearing, Respondent informed the court that Flores was no longer in bankruptcy. The court then ordered that the complaint in the *Flores* matter be served by September 27, 2010, and that a Certificate of Service be filed prior to the Certificate of Progress hearing set for December 3, 2010.

On December 3, 2010, Respondent appeared as ordered for the Certificate of Progress hearing and requested additional time to file the Certificate of Service. The court ordered Respondent to file the Certificate of Service on or before December 21, 2010.

On December 27, 2010, the court served Respondent with a Notice of Hearing, informing him that an OSC regarding the failure to file a Certificate of Service in the *Flores* matter was set for January 28, 2011. Respondent received the Notice of Hearing.

On January 27, 2011, Respondent signed and filed a Certificate of Service in the *Flores* matter. The Certificate of Service stated, in relevant part:

"I certify under penalty of perjury under the laws of the State of California that all defendants named in the complaint of the [*Flores* matter] have either made a general appearance or have been properly and timely served in compliance with San Diego Superior Court Rules."

In fact, no defendant in the *Flores* matter had made a general appearance or had been served. Respondent knew that no defendant in the *Flores* matter had made a general appearance or had been served. His statement under penalty of perjury in the Certificate of Service was false and misleading.

On April 12, 2011, the court served Respondent with a Notice of Hearing, informing him that an OSC regarding the failure to request entry of default in the *Flores* matter was set for May 13, 2011. Respondent received the Notice of Hearing.

On May 13, 2011, Respondent appeared as ordered for the OSC hearing. At that hearing, Respondent informed the court that the parties in the *Flores* matter had settled and requested that the *Flores* matter be placed on the dismissal track. The court ordered the *Flores* matter placed on the dismissal track. In fact, the *Flores* matter had not settled and Respondent knew that his statement was untrue at the time he made it to the court.

On May 13, 2011, the court served Respondent with a Notice of Dismissal, informing him that the court would dismiss the *Flores* matter without prejudice on June 27, 2011, unless Respondent: (1) filed a judgment or dismissal; or (2) appeared ex parte in court and showed good cause why the matter should not be dismissed. Respondent received the Notice of Dismissal. Respondent did not subsequently file a judgment or dismissal or appear ex parte to show good cause why the *Flores* matter should not be dismissed.

On June 27, 2011, the court ordered the *Flores* matter dismissed without prejudice and noted in its order that the court "...was previously notified that the case has settled."

Thereafter, Respondent knew or should have known that the court had dismissed the *Flores* matter consistent with the May 13, 2011 Notice of Dismissal previously served upon him. Yet, he took no action to move to set aside the dismissal.

Counts One and Two - (§ 6068, subd. (d) [Attorney's Duty to Employ Means Consistent with Truth])

Section 6068, subdivision (d), provides that an attorney has a duty to employ those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of law or fact.

Respondent has stipulated, and this court finds, that Respondent committed two acts of misleading a judge with false statements. The first was when he signed and filed the Certificate of Service under penalty of perjury on January 27, 2011, falsely stating that the defendant in the *Flores* matter had made a general appearance or had been served. The second was when he falsely informed the Court on May 13, 2011, that the parties in the *Flores* matter had settled. Each of these statements was knowingly false and constituted a willful violation by Respondent of section 6068, subdivision (d).

Count Three - (§ 6106 [Moral Turpitude])

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

By filing a false Certificate of Service under penalty of perjury and by falsely informing the Court that the *Flores* matter had settled, Respondent repeatedly made statements to the superior court that he knew were false and misleading. Thus, Respondent committed acts involving moral turpitude and dishonesty in willful violation of section 6106.

But because the facts are the same supporting the section 6068, subdivision (d), and section 6106 violations, the court will not ascribe additional discipline based on Respondent's section 6106 violation. (*In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844, 857.)

Count Four - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

Respondent failed to pursue the *Flores* matter and eventually acquiesced in the court's dismissing the case. This dismissal was without the advance knowledge or approval of the client. Respondent seeks to explain his conduct by stating that he had previously indicated to the client that he did not feel comfortable handling the case, both because he was not especially knowledgeable about banking issues and because he did not feel equipped as a sole practitioner to take on Bank of America, with its many attorneys. According to Respondent, he told Flores that he would file the lawsuit to avoid it being time-barred, but that Flores would then need to find another attorney to handle it.

Respondent's explanation is disputed by Flores and lacks credibility. Rather than merely draft the complaint as an in pro per filing by Flores, Respondent prepared and filed the lawsuit as Flores' attorney of record. He remained counsel of record in the case until after it was dismissed. He essentially did nothing in the case, other than repeatedly lie to the court to conceal his inactivity. Eventually, he allowed the case to be dismissed, and he then made no effort to have the dismissal set aside.

By taking no proper steps to advance or preserve the Flores lawsuit, including failing to take any action to move to set aside the dismissal of the *Flores* matter, Respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

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Count Five - (§ 6068, subd. (m) [Failure to Communicate])

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

The State Bar alleged that Respondent failed to keep Flores reasonably informed by failing to inform Flores that the *Flores* matter had been dismissed by the superior court on June 27, 2011.

The count is dependent on the credibility of the client, Flores. Respondent testified that he had informed Flores that the matter had been dismissed. Flores, on the other hand, testified that Respondent did not advise him of the dismissal.

Based on Flores' testimony and demeanor at trial, the court finds that Flores is an unreliable witness with regard to this issue. Flores made conflicting statements about the same events within moments of one another. For example, he first testified that Respondent never gave him any files. Then he testified that Respondent gave him two boxes of files. When asked difficult questions in simple terms, sometimes by this court, Flores responded with evasive, non-responsive answers that were generally a gratuitous reiteration of his attacks on Respondent. The State Bar spent a lengthy break meeting with the witness about his bad answers and then elicited testimony after the break that the witness just had not understood the prior questions. That explanation was not credible. The court's view is that Flores was saying what he thought he needed to say, without any regard for the truth.

On the issue of notice here, Flores initially testified that he had never been told by anyone that the case had been dismissed. The State Bar then sought to fix this misstatement by reminding the witness that he had submitted a document to the State Bar (already admitted as an exhibit in the case), in which Flores had stated that he had first been informed of the dismissal by

the San Diego Legal Clinic when Flores was trying to find a lawyer to sue Respondent. Later, it was developed from Flores' testimony that he had asked for and received his file from Respondent shortly after the case was dismissed; that he had then gone with an English-speaking friend (an engineer) to look at the court file and copy documents; that the friend had reviewed the court file and told Flores that he needed to hire an attorney; that Flores had then taken the file to another attorney (accompanied by his engineer friend), who looked at the file and talked in English with the engineer about the problems in the file; and, after that first attorney declined to handle the case against Respondent, Flores then went to the San Diego Legal Clinic, which prepared his complaint to the State Bar. Clearly, Flores was aware before his trip to the legal clinic that the case was no longer pending.

Additional impeachment of Flores resulted from his claim that he had sent a written request for a status report to Respondent on a date after the case had been dismissed. Such a request for a status report would be inconsistent with Respondent's testimony that Flores had previously been informed that the case was dismissed. When Flores then produced the writing to which he had referred, it did not contain the claimed request for a status report. Instead, it requested that Respondent turn over the file.

Reasonable doubts in proving a charge of professional misconduct must be resolved in the accused attorney's favor. (*Ballard v. State Bar* (1983) 35 Cal.3d 274, 291.) Because there is no clear and convincing evidence that Respondent failed to inform Flores that the matter had been dismissed by the superior court, this count is dismissed with prejudice.

Aggravation²

Prior Record of Discipline (Std. 1.2(b)(i).)

Respondent has three prior records of discipline. This is a serious aggravating factor.

1. On August 22, 1990, the Supreme Court issued an order of public reproof against Respondent, in which he stipulated to, for a misdemeanor conviction for false advertising. (Supreme Court case No. S011891; State Bar Court case No. 89-C-10104.)
2. On March 2, 1993, the California Supreme Court filed an order that suspended Respondent from the practice of law for two years, stayed, placed him on probation for two years, and actually suspended him for 30 days for his misconduct in three matters. Respondent stipulated to failure to comply with a condition attached to his public reproof; client trust account violation; failure to perform services competently; and failure to communicate. (Supreme Court case No. S030441; State Bar Court case Nos. 91-H-06748 et al.)
3. On February 16, 2000, the California Supreme Court filed an order suspending Respondent from the practice of law for two years, stayed, and placing him on probation for two years on condition that he be actually suspended for 60 days. Respondent stipulated to culpability in two separate matters, including failure to perform services competently and failure to properly manage his client trust account. (Supreme Court case No. S084164; State Bar Court case Nos. 96-O-00984 et al.).

² All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)

Respondent's multiple acts of misconduct are an aggravating factor. He misled the judge on two separate occasions; committed acts involving moral turpitude and dishonesty; and failed to perform services competently.

Harm to Client/Public/Administration of Justice (Std. 1.2(b)(iv).)

Respondent significantly harmed his client in that the *Flores* matter was dismissed before Flores had his day in court.

Mitigation

No Prior Record (Std. 1.2(e)(i).)

Respondent is entitled to mitigation credit for having a discipline-free practice for 13 years between his last misconduct in 1998 and the current misconduct in 2011.

Extreme Emotional/Physical Difficulties (Std. 1.2(e)(iv).)

At the time Respondent was representing Flores, Respondent was scheduled to have serious surgery for cancer, surgery that ultimately resulted in his being impaired for approximately six months. However, no causal nexus was established between his health issue and his misconduct. Thus, such physical difficulties do not constitute a substantial mitigating factor. (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.)

Candor/Cooperation to Victims/State Bar (Std. 1.2(e)(v).)

Respondent's candor and cooperation with the State Bar, by entering into a stipulation as to facts, is given some weight in mitigation.

Community Work (Std. 1.2(e)(vi).)

Respondent's volunteer work in the legal community is a mitigating factor. Respondent presented evidence of his pro bono work as a legal educator, such as teaching a course on interviewing and counseling at Thomas Jefferson School of Law from 2000 to 2006 and

received Minimum Continuing Legal Education (MCLE) credit for his teaching. He participated as a speaker at a seminar on evidence and as a workshop leader at the San Diego Inn of Court's trial practice program. Respondent also provided pro bono services with the San Diego Volunteer Lawyer Program from 1987 to 1990.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, this court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The court then looks to the decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) As the Review Department noted more than 20 years ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton* (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended

sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for Respondent's misconduct is found in standard 1.7(b), which provides that when an attorney has two prior records of discipline, the degree of discipline in the current proceeding is to be disbarment unless the most compelling mitigating circumstances clearly predominate.

There are no compelling mitigating circumstances in this matter. Instead, there is a track record of repeated violations by Respondent of his professional obligations, to the detriment of the public. Respondent's three prior impositions of discipline have not operated to cause Respondent to conform his conduct to ethical norms. In sum, it is clear that strong steps must be taken to protect the public from future professional misconduct on his part. For all of the above reasons, this court concludes that it is both appropriate and necessary that Respondent be disbarred from the practice of law.

Recommendations

It is recommended that Respondent **Raymond Ortiz Buendia**, State Bar Number 94975, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

It is further recommended that Respondent comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of this order.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Order of Involuntary Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **Raymond Ortiz Buendia**, State Bar Number 94975, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: January _____, 2014

DONALD F. MILES
Judge of the State Bar Court